

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl.No. 3371 of 2007()

CRIME NO. 259/07 OF KONDOTTY POLICE STATION
AGAINST THE JUDGEMENT/ORDER IN BA.2888/2007
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PETITIONERS/ACCUSED 4 & 10

1. VIPIN, 24 YEARS,
S/O VENUGOPAL, KRISHNALAYAM,
THEKKANVEETIL HOUSE, MURINGOOR, THRISSUR DIST.
2. K.D.THOMAS, S/O K.P.DEVASSY,
KANNAMPUZHA HOUSE, KHANNA NAGAR,
KORATTY.

BY ADV. SRI.A.C.DEVY

RESPONDENTS:

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY D.G.P. SRI. P.G. THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 3371 of 2007

Dated this the 20th day of July, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 4 and 10. They face allegations now under Sections 395 and 120B I.P.C. Altogether there are 11 accused persons arrayed in the crime so far. The case has had a checlered history by now.

2. The Sub Inspector of police, Chalakkudy, on receipt of some discreet information which he had, intercepted a motor cycle in which accused 1 to 3 were travelling on 23.3.2007. Those accused persons were arrested. They allegedly carried with them a huge amount of currency notes. They were unable to account for the possession of those currency notes. Interrogation of the first accused revealed that the currency which they had with them was part of the booty in a crime committed earlier within the jurisdiction of Kondotty Police on 13.2.2007. The Circle Inspector of Police, Chalakkudy took over the investigation in Crime No.169 of 2007. He went to the spot of occurrence within the jurisdiction of Kondotty police station and verified the acceptability of the confession statement of

the first accused. He confirmed that an incident had taken place on 13.2.2007. Accordingly crime was transferred from Chalakkudy police station to Kondotty police station. The crime was re-registered as Crime No.259/07 of Kondotty Police Station on 12.4.2007.

2. Now coming to the specific facts of this case. The 11th accused is alleged to be an informer to the authorities in Hawala transactions. It would appear that he was initially an informer to the Department. He later appears to have realised that it is more lucrative to give information to underground groups, who could attack and plunder the carriers of Hawala money. He allegedly informed the other accused. A conspiracy was allegedly hatched and all the accused were parties to the said conspiracy. Accused 1 to 7 allegedly waited for information from 11th accused to attack those carriers of such currency. Accused No.11 allegedly furnished information and at a spot on the Airport road connecting NH 17 and NH 213, within the jurisdiction of Kondotty Police Station, the unsuspecting passengers of the Maruti car - allegedly hawala money carriers - who were carrying a large amount of Rs. 40 Lakhs with them, were attacked by the conspirators, who travelled in a Qualis car. They waylaid the passengers in the Maruti car and took away the entire money which was kept in the

Maruti car in a cardboard box. The passengers in the Maruti car were attacked. Their car was damaged. Chilly powder was thrown at their face. The local people assembled. The miscreants drove away with the booty. The passengers of the Maruti car stated to the local people that others need not interfere and that they have been working for their Boss for a long time and that their Boss will do the needful. The Maruti car which was waylaid remained at the scene of the crime for a period of more than three hours. Thereafter the car was also removed.

3. The police wants the court to believe that the Kondotty police had not scent of the crime, which occurred within their jurisdiction. They did not move their little finger against the said crime. The Kondotty Police wants the court to believe that it is only when the Chalakudy police arrested some of the accused long later and passed on the information to them that they came to know of the crime committed.

4. It shocks me to note that this is the quality of policing which the police does in Kondotty. Such a serious crime had been committed and the local police had no clue of the crime until the Chalakudy police arrested the accused and came back to the scene. I find it difficult to assume that no information about the crime was at all received at the local police

station. Has the informer system of police vigilance totally broken down? How do the police expect to function if such a serious crime will not come to their knowledge in spite of the fact that the incident took place on the sensitive Airport road connecting two National Highways? The car had remained in the scene in the damaged state for more than three hours, the case diary shows. Is the administration of criminal justice being done to the tune of “Bosses” like the one referred to by the victims in this case? Even if the injured persons did not complain, I would certainly believe that the Kondotty police had the duty to take action regarding such an incident which had taken place within their jurisdiction. Nothing was done until the Chalakudy police registered the crime and reported that fact to the Kondotty police. Was the Chalakudy police also being prompted and triggered by the “Boss” concerned? I have serious doubts.

5. Be that as it may, the investigation is in progress. I am not satisfied with the quality of investigation at all. I would certainly expect the powers that be to ensure that the investigation is transferred to more competent, centralised and efficient hands so that the truth will come out in its fullness at the earliest.

6. Coming back to the investigation so far conducted. Accused 1 to 3 have already been released on bail, it is submitted. Accused No.9 has already obtained anticipatory bail from another bench of this Court. It is submitted that though he appeared before the Investigating Officer as directed in the anticipatory bail order, he has not been complying with the conditions thereafter. No steps have been taken by the Investigators, even though in the counter statement it is alleged that the said accused i.e. A9, has not been complying with the conditions. Accused 6 and 8 also came to this Court with an application for anticipatory bail. Anticipatory bail was refused. But directions were issued in their favour that they can surrender before the Investigator between 22.5.07 and 24.5.2007. But they have not complied with the directions in the order so far, it is submitted. They have not appeared before the Investigating Officer so far. Accused No.6 in a different name had also come before this Court along with Accused 5 and 7 and had applied for anticipatory bail. That application was allowed by another bench subject to conditions. But the conditions have not been complied with so far. Thus till now only A1 to A3 have been granted regular bail, it is submitted.

7. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. It is prayed that directions under Section 438 Cr.P.C. may be issued in their favour.

8. The learned D.G.P., who has entered appearance on behalf of the State before this Court, opposes the application. The learned D.G.P. submits that in a serious crime like this there is absolutely no justification in the prayer for invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The petitioners have to be arrested. Custodial interrogation of the petitioners is absolutely essential. The petitioners may not be granted anticipatory bail, submits the learned D.G.P. As directed by this Court all the police officials concerned were given opportunity to explain their stand. The S.I. and C.I. of Police, Kondotty have filed their statements.

9. I have considered all the relevant inputs. I have no hesitation whatsoever to agree with the learned D.G.P. that this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioners. This is an eminently fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate and seek bail in the ordinary course. The allegations

are serious. It shocks me to note that such a serious crime should remain undetected for such a long period of time. Even the victims of the crime have not been identified and traced so far. Nay, the number of the Maruti car which was involved, which was damaged and which was there on the public road for 3 hours after such a gruesome crime has not been traced so far even admittedly. The fact that the local Sub Inspector was a novice or that the investigator came to know of the crime only belatedly are not satisfactory reasons for the sorry state of affairs. The learned D.G.P. submits that steps shall immediately be taken to ensure that the investigation is entrusted to more competent hands. I assume that the same shall be done.

10. This application is accordingly dismissed. I expect the learned D.G.P. to inform this court all the steps taken within a period of 30 days. Call on 20.8.2007 for report of the D.G.P.

(R. BASANT)
Judge

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